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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/501,623	07/15/2004	Philippe Moussou	C 2319 PCT/US	2222
23657	7590	08/31/2006		
COGNIS CORPORATION PATENT DEPARTMENT 300 BROOKSIDE AVENUE AMBLER, PA 19002			EXAMINER MCCORMICK EWOLDT, SUSAN BETH	
			ART UNIT	PAPER NUMBER
			1661	

DATE MAILED: 08/31/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/501,623

Applicant(s)

MOUSSOU ET AL.

Examiner

S. B. McCormick-Ewoldt

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 14 July 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 41-48 and 53-60 is/are pending in the application.
- 4a) Of the above claim(s) 55 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 41-48, 53, 54 and 56-60 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>7-14-06</u> . | 6) <input type="checkbox"/> Other: _____  |

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### **DETAILED ACTION**

The amendment of July 14, 2006 is hereby acknowledged.

#### **Status of Application**

The Art Unit location of your application in the PTO has changed. To aid in correlating any papers for this application, all further correspondence regarding this application should be directed to Group Art Unit 1661.

#### **Election/Restrictions**

Applicant elected, with traverse, the species rice, in the reply filed on February 17, 2006. In the response filed February 17, 2006, Applicant did not elect a species as requested for claim 51. Applicant was notified by telephone to elect a species of claim 51 on March 15, 2006. Applicant elected, with traverse, the species lactobacillus, on March 30, 2006.

Claim 55 is withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on February 17, 2006.

#### **Claims Pending**

Claims 41-48, 53-54 and 56-60 are pending. Applicant has cancelled claims 1-40 and 49-52. Claim 55 is withdrawn. Claims 41-48, 53-54 and 56-60 will be examined.

#### **Information Disclosure Statement**

The references, Bruchausen listed on the information disclosure statement filed July 14, 2006 is not considered because there is no English translation.

#### **Claim Rejections - 35 USC § 102**

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

Claims 41, 43-44, 54 and 57, 59-60 are rejected under 35 U.S.C. 102(e) as being anticipated by Miyazaki *et al.* (US 7,090,875).

Miyazaki *et al.* (US 7,090,875) expressly teach using a microorganism to react with a bean extract (i.e. plant extract) to produce a fermented product (column 3, lines 58-63). The microorganisms are of the genera *Lactobacillus*, *Lactococcus* and *Leuconostoc*. The bean extract may be fermented by mixed fermentation using several kinds of strains in combination or by continuous fermentation using several kinds of strains in combination (column 4, lines 1-14). Miyazaki also discloses that yeast may be added for the growth of microorganisms to the bean extract prior to fermentation (column 4, lines 43-47). In addition, the amount of fermented product is 0.01-20% (column 6, lines 6-12). Miyazaki also teaches that the fermentation mixture was filtered to obtain the fermented product (see Preparation Examples 1 and 2). Miyazaki teaches using the fermented product for a skin preparation (see abstract and column 1, lines 6-10). Thus, the fermentation process taught by Miyazaki meet the limitations of claim 41 as the process comprises fermentation with combination of *Lactobacillus*, *Lactococcus* and *Leuconostoc* and with plant parts and thus anticipates the claimed invention.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the Examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out

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the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the Examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 41-48, 53-54 and 56-60 are rejected under 35 U.S.C. 103(a) as being unpatentable over Miyazaki *et al.* (US 7,090,875) in view of Zhang *et al.* (US 6,632,428).

Miyazaki *et al.* (US 7,090,875) expressly teach using a microorganism to react with a bean extract (i.e. plant extract) to produce a fermented product (column 3, lines 58-63). The microorganisms are of the genera *Lactobacillus*, *Lactococcus* and *Leuconostoc*. The bean extract may be fermented by mixed fermentation using several kinds of strains in combination or by continuous fermentation using several kinds of strains in combination (column 4, lines 1-14). Miyazaki also discloses that yeast may be added for the growth of microorganisms to the bean extract prior to fermentation (column 4, lines 43-47). In addition, the amount of fermented product is 0.01-20% (column 6, lines 6-12). Miyazaki also teaches that the fermentation mixture was filtered to obtain the fermented product (see Preparation Examples 1 and 2). Miyazaki teaches using the fermented product for a skin preparation (see abstract and column 1, lines 6-10)

Miyazaki does not disclose wherein rice is used or wherein a pretreatment is used or wherein the fermentation broth pH is 4.5 to 8.8 prior to fermentation or wherein the pretreatment is sterilization or pasteurization or wherein the pretreatment is at a temperature from 60° to 135° C.

Zhang *et al.* (US 6,632,428) disclose a rice fermentation process that uses a pretreatment of sterilization. The pH is adjusted to 3.0 to 5.0 and the mixture is steamed sterilized (121° C). The mixture is then cooled and inoculated with a microorganism. Fermentation of the rice mixture is carried out at a temperature of 15°-35° C (column 7, lines 57-63).

One of ordinary skill in the art would have been motivated to ferment rice and inoculate the fermentation with *Lactobacillus*, *Lactococcus* and *Leuconostoc* because it was known to be used as a cosmetic for the skin or hair. It was clear from the Miyazaki reference that microorganisms of the genera *Lactobacillus*, *Lactococcus* and *Leuconostoc* are used in combination with a bean extract. The bean extract may be fermented by mixed fermentation using several kinds of strains in combination or by continuous fermentation using several kinds of strains in combination. Miyazaki also discloses that yeast may be added for the growth of

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microorganisms to the bean extract prior to fermentation. In addition, the amount of fermented product is 0.01-20%. Miyazaki also teaches that the fermentation mixture was filtered to obtain the fermented product. Miyazaki teaches using the fermented product for a skin preparation. It was further clear from the Zhang reference a rice fermentation process uses a pretreatment of sterilization. The pH is adjusted to 3.0 to 5.0 and the mixture is steamed sterilized (121° C). The mixture is then cooled and inoculated with a microorganism. Fermentation of the rice mixture is carried out at a temperature of 15°-35° C. Therefore, one of ordinary skill in the art would have had a reasonable expectation to inoculate a rice fermentation mixture with the microorganisms *Lactobacillus*, *Lactococcus* and *Leuconostoc* for which to provide an active component to be used as a cosmetic.

From the teachings of the references, it is apparent that one of ordinary skill in the art would have had a reasonable expectation of success in producing the claimed invention. Therefore, the invention as a whole was *prima facie* obvious to one of ordinary skill in the art at the time the invention was made, as evidenced by the references.

#### Summary

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

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Correspondence

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Susan B. McCormick-Ewoldt whose telephone number is (571) 272-0981. The Examiner can normally be reached Monday through Thursday from 6:00 a.m. to 4:30 p.m.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiners' supervisor, Anne Marie Grunberg, can be reached at (571) 272-0975. The official fax number for the group is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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CHRISTOPHER R. TATE  
PRIMARY EXAMINER